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June 14, 1995

Mr. William P. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

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**Re: Comments Submitted to the Second Notice of Proposed Rule Making,  
CC Docket No. 94-54**

Dear Mr. Caton:

Transmitted herewith, on behalf of WJG MariTEL Corp., are one (1) original and four (4) copies of Comments submitted in the above referenced proceeding.

If you should have any questions related to this matter, kindly contact the undersigned counsel.

Sincerely,



Susan H.R. Jones

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of )  
 )  
Interconnection and Resale Obligations )  
Pertaining to )  
Commercial Mobile Radio Services )

CC Docket No. 94-54

Comments  
of  
WJG MariTEL

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WJG MariTEL Corporation ("MariTEL"), by its attorneys, and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.415, hereby submits its comments in response to the Second Notice of Proposed Rulemaking ("NPRM") adopted in the above-referenced proceeding. In the NPRM, the Commission asks interested parties to address its tentative conclusion not to require commercial mobile radio service ("CMRS") providers to interconnect with the switches of other CMRS providers, and its tentative conclusion to impose resale obligations on CMRS providers.

**Introduction**

MariTEL is the largest provider of public coast station services in the United States. Its stations cover the Gulf of Mexico, the Southern Atlantic Coast, and some of the U.S. inland waterways. MariTEL's present inland waterway network serves most areas from Baton Rouge, Louisiana to Chicago, Illinois. Its southern Atlantic system serves most major markets from Morehead City, North Carolina, to the Florida Keys. The network consists of eighty-seven (87) transmit locations, each interconnected to one of three control switching offices located in Gulfport, Mississippi; Memphis, Tennessee; and Hollywood, Florida. Public coast stations, regulated under Part 80 of the Commission's Rules, provide interconnected common carrier

public correspondence telecommunications and data services to sea-going vessels, barges and recreational boaters on frequencies designated for VHF maritime radio.

Public coast stations were previously regulated by both the former Private Radio Bureau (now the Wireless Telecommunications Bureau) and the Common Carrier Bureau as a hybrid service. Until recently, public coast stations were classified as "dominant" common carriers for purposes of the Title II requirements of the Communications Act of 1934, as amended ("the Act," or "Communications Act"). Pursuant to the Second Report and Order in *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket 93-252, 9 FCC Rcd 1411 (1994) (Second Report and Order), which implemented the basic provisions of Sections 3(n) and 332 of the Communications Act pursuant to the Omnibus Budget Reconciliation Act of 1993,<sup>1</sup> public coast stations were reclassified as CMRS providers because they offer to a substantial portion of the public, a for-profit radio service interconnected to the public switched telephone network ("PSTN").<sup>2</sup>

As a provider of CMRS services, therefore, MariTEL would potentially be subject to any interconnection and resale obligations created in this proceeding. MariTEL, therefore, is pleased to have this opportunity to submit the following comments.

## **Comments**

### **I. Interconnection Obligations Are Unnecessary At this Time.**

MariTEL strongly supports the Commission's tentative conclusion not to impose CMRS-to-CMRS interconnection obligations at this time. Such obligations are unnecessary and premature in the current CMRS marketplace.

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<sup>1</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392, 395 (1993).

<sup>2</sup> Second Report and Order, *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, (Second Report and Order), GN Docket No. 93-252, 9 FCC Rcd 1411 (released March 7, 1994), at ¶ 137.

In the Second Report and Order, the Commission defined CMRS providers as those who offer, for a profit, *interconnected mobile service through the PSTN* to a substantial portion of the public. Thus, interconnection between CMRS customers, although not direct, is already possible. In addition, given the current landscape of the CMRS marketplace, with respect to both technology and competition, MariTEL suggests that any additional requirement for direct CMRS-to-CMRS interconnection is unnecessary, at least with respect to public coast stations.

**A. Diversity Within the CMRS Marketplace Reduces the Need for Direct CMRS-to-CMRS Access; Market Forces Are Sufficient to Ensure Direct Interconnection, Should Demand Require it.**

The current CMRS marketplace tends to serve niche communities of customer need. MariTEL, as a public coast station provider, offers interconnection to the PSTN to maritime radio users so that boaters may access landline telephones through their marine VHF portable radios. Specialized mobile radio (“SMR”) providers generally target a mobile workforce with dispatch communications needs. Cellular providers serve a segment of the public which seeks a mobile analogue to the home telephone. Personal Communications Services (“PCS”), although still in development, will likely target consumers and/or businesses with a variety of data and voice mobile communications needs.

With such diverse customers under the broad CMRS umbrella, the immediate need for direct CMRS-to-CMRS interconnection is unlikely. While there may be a convergence of CMRS services in the future, a diversity of services directed toward diverse consumers will probably remain the norm. Thus, there appears to be no immediate need for direct access across the service areas. With public coast stations, for example, the primary core of transmissions are self-contained within the public coast station service area, with primarily ship-to-landline

telephone operations through the PSTN. It is probably rare that a customer of MariTEL -- a recreational boater on the Gulf of Mexico -- will require direct access to a customer of an SMR provider on land -- a delivery vehicle for a commercial entity. In the event that the boater wishes to communicate with the delivery personnel, however, such connection is possible, with interconnection through the PSTN. MariTEL asserts that such accessibility is fully adequate at this time, and appropriate in view of the state of the current CMRS marketplace.

MariTEL suggests that more direct interconnection capabilities will develop, if necessary, as a result of marketplace forces. CMRS providers faced with demand for direct interconnection will logically seek to implement such interconnection with alternative networks as circumstances necessitate. The current CMRS marketplace is vitally competitive, and is expected to become more so, with sufficient market forces to enforce open accessibility between CMRS providers, should the customer demand it. Because of the competition, and thus lack of any dominant or bottleneck providers, regulatory intervention serves no purpose.

**B. Because the Current CMRS Market is in Early Development, Technical Requirements Are Premature.**

While there may be instances where CMRS-to-CMRS interconnection would be useful, MariTEL strongly supports the commenters in the earlier phase of this proceeding who argued that it is impractical to impose direct CMRS-to-CMRS interconnection obligations in the current CMRS marketplace, where technology and system designs are still in developmental stages.<sup>3</sup> It is difficult to discern, at this early stage of CMRS industry development, how best to achieve

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<sup>3</sup> See *e.g.*, Comments of Nextel Communications, Inc., at 18-19; The Southern Company at 4; OneComm Corporation at 21; Cellular Telecommunications Industry Association at 13-14, submitted in the Notice of Proposed Rulemaking and Notice of Inquiry, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service, CC Docket No. 94-54, 9 FCC Rcd 5408 (1994) ("Equal Access NPRM").

direct interconnection between mobile carriers, and whether such an obligation would be technically or economically feasible. With such uncertainty in this regard, MariTEL urges the Commission to refrain from imposing direct interconnection obligations or technical parameters upon CMRS providers.

If the Commission imposes technical parameters for interconnection upon CMRS providers at this developmental stage of technology and system design, the regulatory controls might actually inhibit technical innovation and creativity. In similar situations with respect to technical standards, the Commission declined to impose standards, favoring a market approach to ensure compatibility. In the Second Report and Order, *In the Matter of the Use of Subcarrier Frequencies in the Aural Baseband of Television Transmitters*, Docket No. 21323, 55 RR 2d 1642 (1984), for example, the Commission refused to impose technically specific standards for permissible uses of the television aural baseband to ensure television receiver compatibility, stating clearly that “strong marketplace incentive exists to maximize the quality of service and the rules need not set detailed specifications.” *Id.* at ¶ 15. In reaching this conclusion, the Commission reasoned that “*technology should not be restrained by earlier choices by manufacturers*” and that “*any approach to ensuring compatibility should not impede the opportunity for marketplace advances in technology.*” *Id.* at ¶ 9 [Emphasis added.]

For the foregoing reasons stated herein, therefore, MariTEL urges the Commission not to impose direct CMRS-to-CMRS interconnection at this time. To do so would be both unnecessary and contrary to the public interest.

## **II. Resale Obligations for CMRS Providers Will Promote Competition and Improve Services.**

MariTEL opposes the Commission's tentative proposal to extend the obligation to require resale of services to all CMRS providers. While it may be appropriate to require resale in some segments of the CMRS marketplace, MariTEL asserts that in the public coast station industry, the lack of spectrum and special nature of the service militate in favor of a different, market-based approach.

As noted above, MariTEL serves a unique and distinct segment of the mobile communications marketplace. Significantly, public coast station operators are required to provide their service in a particular fashion, which ensures the safety of the boating public. Some of those requirements include, at least for today, the requirement to keep watch on a distress channel, and the requirement to have an operator on duty. In the event that a reseller were to provide public coast station service, the safety measures incorporated into public coast station operation could be lost. Consumers could receive the public coast service from a provider who would not be subject to regulations which require the provision of safety of life services. Not only would MariTEL be competing against an entity not subject to the same costly safety operational measures, the public would be without adequate protection. This outcome is contrary to the public interest.

Moreover, while MariTEL serves maritime users indiscriminately and upon demand, consistent with requirements of the Communications Act and the Commission's regulations, much of its customer base is comprised of thousands of subscribers who pay a yearly service fee. The service fee covers benefits of lower per-minute calling charges and added-value services, such as direct connection to the United States Coast Guard and towing services. A significant

portion of MariTEL's revenue is derived from the yearly service fees. If MariTEL is required to resell its service to, for example, several large providers, it would be required to impose only one service fee, and the bulk minute rate charged to its other customers. It would lose, therefore, the fee charges on a significant portion of its capacity, threatening its economic viability. Public coast station operators, while a small segment of the CMRS community, provide a significant communications and safety service to the boating public. Any measure that threatens the continuing viability of public coast stations is, thus, contrary to the public interest.

In its NPRM, the Commission notes that there may be classes of CMRS providers for whom resale is unreasonable, unnecessary, or technically infeasible. For such classes, the Commission acknowledges that exemption from resale obligations might be warranted, provided that such exemption does not violate the just and reasonable standards of Section 201(b) of the Act, nor the non-discrimination provisions of Section 202(a) of the Act.<sup>4</sup> In view of the unique nature of the public coast station and CMRS industry, the concerns addressed by Sections 201(b) and 202(a) are not relevant.

Specifically, the noted provisions are designed to prevent a dominant common carrier from abusing its position within the telecommunications market to preclude or hinder competition by other carriers. The Commission has frequently noted, however, that the CMRS marketplace is vitally competitive.<sup>5</sup> In addition, the Commission has often acknowledged that the competition posed to the public coast station industry by the growing cellular market has substantially weakened the market power of the public coast station operator.<sup>6</sup> Currently, public

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<sup>4</sup> NPRM at ¶ 87.

<sup>5</sup> See, e.g., NPRM, at ¶ 36; Equal Access NPRM, at ¶ 33.

<sup>6</sup> Such emergence of cellular competition in the public coast station industry has been recognized by the Commission in a recent rulemaking proceeding in which it stated: "Cellular radio offers increasingly competitive service that is supplanting the use of public coast stations." Notice of Proposed Rulemaking and Notice of Inquiry, In



coast station operators are inhibited from engaging in meaningful competition because of, among other reasons, a serious scarcity of spectrum. The maximum number of channels available within a public coast station market is ten (10).<sup>7</sup> Because of this limited capacity, public coast station operators are unable to engage in the type of anti-competitive behavior within the CMRS marketplace proscribed by Sections 201(b) and 202(a) of the Act. Accordingly, MariTEL asserts that Sections 201(b) and 202(a) of the Communications Act, with protections against anti-competitive behavior, are inapposite to public coast station operators. The Commission is thus warranted in exempting the public coast station industry from mandatory application of resale obligations.

In summary, while MariTEL foresees the potential benefits to resale opportunities within the public coast station marketplace, it strongly asserts that the public interest is best and most efficiently served, however, by permitting those opportunities to be developed as a result of market forces, rather than by Commission mandate.

### **Conclusion**

MariTEL supports the Commission's proposals not to impose interconnection obligations on CMRS providers at this time and urges the Commission to exempt public coast station operators from resale obligations. In both cases, MariTEL suggests that competition, and thus the public interest, will be furthered if market forces are permitted to operate.

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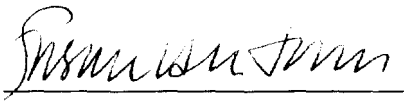
the Matter of Amendment of the Commission's Rules Concerning Maritime Communications (hereinafter "Amendment of Maritime Rules"), 7 FCC Rcd 7863, 7870, ¶ 35, (Pri.Rad.Bur. 1993).

<sup>7</sup> 47 C.F.R. 80.371(c).

WHEREFORE, for the foregoing reasons, MariTEL urges the Commission to adopt regulations in accordance with the opinions expressed herein.

Respectfully Submitted,

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